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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,380	12/23/2003	John M. Carnahan III	12104-0002	2710

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EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/743,380

Applicant(s)

CARNAHAN, JOHN M.

Examiner

David J. Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-2 and 4-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2 and 4-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12-23-03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Amendment

1. This office action is in response to applicant's amendment dated 6-7-05 and this action is final.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4, 7 and 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,722,196 to Flynn.

Referring to claim 1, Flynn discloses a method of detecting fishing conditions to allow for selection of a proper fishing lure comprising, providing a screening device – at 10, having an elongated frame – see figures 2-3, the elongated frame supporting an elongate screen – at 52, the screen attached to the frame to form a curved configuration in use – see for example figure 1, supporting the frame whereby a user inserts at least a portion of the frame and screen into shallow water, with the frame oriented so the elongate screen spans a depth of the water near a bottom of the shallow water and close to a surface of the water – see for example figure 1,

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column 1 lines 44-67, column 2 lines 1-33 and column 5 lines 36-63, maintaining at least a portion of the frame in the water for a period of time to collect organisms in the water on the screen – see for example figure 1, column 1 lines 44-67, column 2 lines 1-33 and column 5 lines 36-63, removing the portion of the frame and screen from the water and inspecting the screen for collected organisms and selecting the fishing lure based on the organisms collected – see for example figure 1, column 1 lines 44-67, column 2 lines 1-33 and column 5 lines 36-63. Flynn further discloses the frame has one or more support portions – at 16,18,40,42, and one or both of the support portions are embedded in a bed underlying the water as part of the insertion step – see for example figure 1 and column 5 lines 36-63, where a heavy object is placed on the device which allows for the portion of the device resting on the waterbed to be at least partially embedded in the waterbed.

Referring to claim 2, Flynn discloses the frame is collapsible and the frame is collapsed after completing the inspecting step – see for example figure 1, column 1 lines 44-67, column 2 lines 1-33 and column 5 lines 36-63.

Referring to claim 4, Flynn discloses the frame includes one or more handle portions – at 38, that can be grasped by a user for the insertion step – see for example figure 1, column 1 lines 44-67, column 2 lines 1-33 and column 5 lines 36-63.

Referring to claim 7, Flynn discloses a screening device for determining fishing conditions comprising, a frame – see figures 2-3, having a pair of side rails 16,18, and at least two cross members – at 40,42, the side rails include at least one handle portion – at 38, and one support portion – at 14, a flexible screen – at 52, having opposing ends and opposing sides – see figure 1, each opposing side aligned and attached to a respective side rail – see figure 1, at least

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one opposing end being a free end and extending between the pair of side rails – see figure 1, the flexible screen having a width such that the free end is curved in shape during use – see for example figure 1.

Referring to claim 9, Flynn discloses each end of the screen is free and curved in shape during use – see for example figure 1.

Referring to claim 10, Flynn discloses the cross members and side rails are immobile with respect to each other when the side rails are interconnected by the cross members – see for example figure 1, column 1 lines 44-67, column 2 lines 1-33 and column 5 lines 36-63.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flynn as applied to claim 1 above.

Referring to claims 5-6, Flynn further discloses larvae or pupae of aquatic insects are collected and a lure is selected based on the collected larvae or pupae and where the collected aquatic insects are located on the screen – see for example figure 1, column 1 lines 44-67, column 2 lines 1-33 and column 5 lines 36-63. Flynn does not disclose the fishing lure is a fly-type lure. However, it would have been obvious to one of ordinary skill in the art to take the

device of Flynn and add the lure being a fly-type lure, so as to allow for the proper fishing attractant to be deployed by the fisherman on that particular body of water.

Claims 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flynn as applied to claim 7 above, and further in view of U.S. Patent No. 1,036,574 to Crane.

Referring to claim 8, Flynn further discloses the cross members having a pair of cross member segments – see for example at 40,42 and proximate 44-50, the cross members – at 40,42, are pivotally attached to a side rail at one end so that the cross member segments and side rails can fold up – see for example figures 2-3 and column 4 lines 23-45. Flynn does not disclose other ends of each segment pivotally attached together. Crane does disclose other ends of the cross members – at 3,6, are pivotally attached together – see for example figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Flynn and add the segments of the cross members being pivotally attached to each other, so as to allow for the device to be easily folded up for storage and or transportation.

Referring to claim 11, Flynn as modified by Crane further discloses the cross member segments lock to keep the side rails spaced apart for collecting purposes – see figure 1 of Flynn and – see at 2 and 7-10 in figures 1-2 of Crane.

Response to Arguments

4. Regarding claim 7, the Flynn reference US 5722196 discloses that the screen – at 52, is attached to the side rails – at 16 and 18 as seen in figure 1 and column 5 lines 36-41, where the screen is shown and described as being attached to the side rails – at 16 and 18. In figure 1, the

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bottom portion of the screen – at 52, is shown attached to and connected to the side rails in that the bottom of the screen forms the shape of the side rails – at 16 and 18. Further, the Flynn reference discloses the side rails have support portions – at either face of the L-shaped rails at 16 and 18 or at 14 which all support the screen – at 52 as seen in figure 1. Further, Flynn discloses the side rails – at 16 and 18 have handle members – at 36,38 as seen in figures 1-2.

Regarding claims 8 and 11, applicant argues that the Crane reference US 1036574 is completely unrelated to the Flynn reference and thus these two references cannot be combined. However, the device of the Crane reference is a net used to collect objects in water as seen in figures 1-2. The Flynn device is also a net used to collect objects in water as seen in figure 1 and therefore both the Flynn and Crane reference discloses devices of similar construction and of similar function and it is deemed that they are combinable to render the claims obvious as seen in paragraph 3 above. Further, both the Flynn and Crane devices are classified in patent class 43 which further shows that they are related to one another.

Further, applicant argues that the combination of the Flynn and Crane references is hindsight reconstruction. However, as seen above both the Flynn and Crane reference are related in that they pertain to nets used in the water and they both contain movable frame elements – at 10-46 in Flynn and – at 1-12 of Crane to change the orientation of the net as it is deployed in the water as seen in figure 1 of Flynn and figures 1-2 of Crane. Therefore, modifying the frame structure of one of the Flynn or Crane reference with that of the other is not deemed to be improper hindsight reconstruction.

Regarding claim 1, the Flynn reference discloses that the frame has support portions at the bottom of the frame – at any portion of 16, 18, 40,42, 44, 46, 48 or 50 which are embedded in

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floor of a body of water as seen in figures 5-7. Further, the embedding of the support portions in the floor of a body of water is an intended use (functional) limitation in an apparatus claim and it is deemed that the support portions at the bottom of the frame of the Flynn reference – at any of 16, 18, 40, 42, 44, 46, 48 or 50, are all capable of being positioned into a floor of a body of water in that the frame of Flynn is rigid and thus has sufficient weight to sink at least partially into the soft floor of the body of water in which it is used.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890.

The examiner can normally be reached on 9hr compressed.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David Parsley
Patent Examiner
Art Unit 3643


PETER M. POON
SUPERVISORY PATENT EXAMINER
8/4/05